

10/602,286  
60130-1705**REMARKS**

Claims 1-22 were rejected as being obvious over Tauney (U.S. 4,679,841). Claim 1 recites a support assembly that includes an arm including a first segment and a second segment pivotally mounted about a pivot, and a spring assembly pivotally attached to the first segment of the arm and biasing the second segment against the vehicle closure member.

The Examiner argues that Applicant must show the distinctions between the claims and the prior art not "design choices". The burden is not on Applicant, but on the Examiner. The Examiner still fails to provide any support for the rejection or the finding that the distinction is a "design choice". In fact, the dramatic and functional differences between the claims and the prior art are not design choices.

As admitted by Examiner, Tauney fails to disclose the limitations required in claims 1 and 11. Instead, the Examiner states that modification of Tauney by reversing the plate (10) and the pivot (7) renders claim 1 obvious. However, such a modification does not meet the limitation of a second segment biased against a vehicle closure member. In Tauney, the plate (9) does not engage the vehicle closure member, but instead only biases the arm (12) against another arm (15).

Claims 1 and 11 clearly require the second segment to be biased against the vehicle closure member. The Tauney "*second segment*" as identified by Examiner does not bias against either the vehicle closure member or the vehicle body. As such, even accepting Examiner's broad interpretation of the plate (9), Tauney does not disclose or suggest the limitation of the second segment biased against the vehicle closure member.

Further, the Examiner's interpretation of the Tauney structure is only possible through impermissible hindsight reasoning using Applicant's disclosure as a guide. An obviousness rejection requires some suggestion or motivation to make a proposed modification. That motivation must come from the prior art, not from Applicant's own disclosure. The Examiner's interpretation that the plate (9) includes a second segment biased against a vehicle closure can only be supported by use of Applicant's disclosure. Clearly, the plate (9) is not biased against anything, and is merely one of at least three links utilized to provide a pop-up feature. Applicant claims a single arm pivotal and biased against a vehicle closure member to provide a pop-up function. Tauney simply does not provide the requisite suggestion or motivation. It is only using Applicant's disclosure as a guide that such an interpretation of Tauney is possible. Accordingly, for these reasons Applicant requests reconsideration and withdrawal of the rejection over Tauney.

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Further, several of the dependent claims include limitations that are not disclosed or suggested by Tauney. Claim 4 includes the limitation of an extension portion extending transversely from the second segment of the arm. Tauney does not disclose or suggest an extension portion.

Claims 8 and 17 include the limitation of a roller attached to the second segment of the arm. Tauney includes a roller attached to arms (15) and (12) but does not disclose or suggest attaching the roller to a second segment of the arm.

Claim 13 includes the limitation of an extension portion extending transversely from the second segment to contact the vehicle closure member when the assembly is attached to the vehicle closure member. Tauney does not disclose or suggest an extension portion, or contact with the closure member.

Claim 14 includes the limitation that the second segment is longer than the first segment. Claim 14 recites a specific relationship between the first segment and the second segment, no matter what length may be required for a specific application. Contrary to Examiners' assertion, the lengths as identified are of the same length. Tauney is silent as to the lengths between pivot points, however; simply reference to the Figures and the use of a ruler will demonstrate that the lengths are identical, contrary to Examiner's assertions.

Claim 16 recites the specific limitation that the first segment is biased downward and that the second segment is biased upward against the vehicle closure. Tauney does not disclose the second segment being biased against the vehicle closure, or the first segment being biased downwardly.

Claim 18 includes the limitation that the first segment and the second segment extend in opposing directions from the pivot. Examiner dismisses the opposing directions limitation, and calls the first and second segments opposing contrary to the common and ordinary meaning of the word opposing.

Further, claim 20 includes the limitation that the arm includes a first segment extending in a first direction and a second segment extending in a second direction from said pivot opposite said first direction. Although Examiner may interpret limitations broadly, such an interpretation cannot be so broad as to go against ordinary meaning, or that meaning that a worker versed in the art would understand. Examiner's interpretation of the "opposite" limitation goes against the common meaning and against that meaning that would be accepted by a worker versed in the art.

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For this reason, Applicant requests reconsideration and withdrawal of the rejection to claims 18 and 20.

All objections and rejections having been addressed, it is respectfully submitted that the present application is in condition for allowance, and a Notice to that effect is earnestly solicited. Applicant believes that no additional fees are necessary, however, the Commissioner is authorized to charge Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds for any additional fees or credit the account for any overpayment.

Respectfully Submitted,

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